

111TH CONGRESS  
2D SESSION

# S. 3847

To implement certain defense trade cooperation treaties, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2010

Mr. KERRY (for himself and Mr. LUGAR) introduced the following bill; which was read twice, considered, read the third time, and passed

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## A BILL

To implement certain defense trade cooperation treaties, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Security Cooperation  
5 Act of 2010”.

6 **TITLE I—DEFENSE TRADE**  
7 **COOPERATION TREATIES**

8 **SEC. 101. SHORT TITLE.**

9 This title may be cited as the “Defense Trade Co-  
10 operation Treaties Implementation Act of 2010”.

1 **SEC. 102. EXEMPTIONS FROM REQUIREMENTS.**

2 (a) RETRANSFER REQUIREMENTS.—Section 3(b) of  
 3 the Arms Export Control Act (22 U.S.C. 2753(b)) is  
 4 amended by inserting “a treaty referred to in section  
 5 38(j)(1)(C)(i) of this Act permits such transfer without  
 6 prior consent of the President, or if” after “if”.

7 (b) BILATERAL AGREEMENT REQUIREMENTS.—Sec-  
 8 tion 38(j)(1) of such Act (22 U.S.C. 2778(j)(1)) is amend-  
 9 ed—

10 (1) in the subparagraph heading for subpara-  
 11 graph (B), by inserting “FOR CANADA” after “EX-  
 12 CEPTION”; and

13 (2) by adding at the end the following new sub-  
 14 paragraph:

15 “(C) EXCEPTION FOR DEFENSE TRADE  
 16 COOPERATION TREATIES.—

17 “(i) IN GENERAL.—The requirement  
 18 to conclude a bilateral agreement in ac-  
 19 cordance with subparagraph (A) shall not  
 20 apply with respect to an exemption from  
 21 the licensing requirements of this Act for  
 22 the export of defense items to give effect to  
 23 any of the following defense trade coopera-  
 24 tion treaties, provided that the treaty has  
 25 entered into force pursuant to article II,

1 section 2, clause 2 of the Constitution of  
2 the United States:

3 “(I) The Treaty Between the  
4 Government of the United States of  
5 America and the Government of the  
6 United Kingdom of Great Britain and  
7 Northern Ireland Concerning Defense  
8 Trade Cooperation, done at Wash-  
9 ington and London on June 21 and  
10 26, 2007 (and any implementing ar-  
11 rangement thereto).

12 “(II) The Treaty Between the  
13 Government of the United States of  
14 America and the Government of Aus-  
15 tralia Concerning Defense Trade Co-  
16 operation, done at Sydney September  
17 5, 2007 (and any implementing ar-  
18 rangement thereto).

19 “(ii) LIMITATION OF SCOPE.—The  
20 United States shall exempt from the scope  
21 of a treaty referred to in clause (i)—

22 “(I) complete rocket systems (in-  
23 cluding ballistic missile systems, space  
24 launch vehicles, and sounding rockets)  
25 or complete unmanned aerial vehicle

1 systems (including cruise missile sys-  
2 tems, target drones, and reconnais-  
3 sance drones) capable of delivering at  
4 least a 500 kilogram payload to a  
5 range of 300 kilometers, and associ-  
6 ated production facilities, software, or  
7 technology for these systems, as de-  
8 fined in the Missile Technology Con-  
9 trol Regime Annex Category I, Item  
10 1;

11 “(II) individual rocket stages, re-  
12 entry vehicles and equipment, solid or  
13 liquid propellant motors or engines,  
14 guidance sets, thrust vector control  
15 systems, and associated production fa-  
16 cilities, software, and technology, as  
17 defined in the Missile Technology  
18 Control Regime Annex Category I,  
19 Item 2;

20 “(III) defense articles and de-  
21 fense services listed in the Missile  
22 Technology Control Regime Annex  
23 Category II that are for use in rocket  
24 systems, as that term is used in such

1 Annex, including associated produc-  
2 tion facilities, software, or technology;

3 “(IV) toxicological agents, bio-  
4 logical agents, and associated equip-  
5 ment, as listed in the United States  
6 Munitions List (part 121.1 of chapter  
7 I of title 22, Code of Federal Regula-  
8 tions), Category XIV, subcategories  
9 (a), (b), (f)(1), (i), (j) as it pertains to  
10 (f)(1), (l) as it pertains to (f)(1), and  
11 (m) as it pertains to all of the subcat-  
12 egories cited in this paragraph;

13 “(V) defense articles and defense  
14 services specific to the design and  
15 testing of nuclear weapons which are  
16 controlled under United States Muni-  
17 tions List Category XVI(a) and (b),  
18 along with associated defense articles  
19 in Category XVI(d) and technology in  
20 Category XVI(e);

21 “(VI) with regard to the treaty  
22 cited in clause (i)(I), defense articles  
23 and defense services that the United  
24 States controls under the United  
25 States Munitions List that are not

controlled by the United Kingdom, as defined in the United Kingdom Military List or Annex 4 to the United Kingdom Dual Use List, or any successor lists thereto; and

“(VII) with regard to the treaty cited in clause (i)(II), defense articles for which Australian laws, regulations, or other commitments would prevent Australia from enforcing the control measures specified in such treaty.”.

**SEC. 103. ENFORCEMENT.**

(a) CRIMINAL VIOLATIONS.—Section 38(c) of such Act (22 U.S.C. 2778(c)) is amended by striking “this section or section 39, or any rule or regulation issued under either section” and inserting “this section, section 39, a treaty referred to in subsection (j)(1)(C)(i), or any rule or regulation issued under this section or section 39, including any rule or regulation issued to implement or enforce a treaty referred to in subsection (j)(1)(C)(i) or an implementing arrangement pursuant to such treaty”.

(b) ENFORCEMENT POWERS OF PRESIDENT.—Section 38(e) of such Act (22 U.S.C. 2278(e)) is amended by striking “defense services,” and inserting “defense services, including defense articles and defense services ex-

1 ported or imported pursuant to a treaty referred to in sub-  
 2 section (j)(1)(C)(i),”.

3 (c) NOTIFICATION REGARDING EXEMPTIONS FROM  
 4 LICENSING REQUIREMENTS.—Section 38(f) of such Act  
 5 (22 U.S.C. 2778(f)) is amended by adding at the end the  
 6 following new paragraph:

7 “(4) Paragraph (2) shall not apply with respect  
 8 to an exemption under subsection (j)(1) to give ef-  
 9 fect to a treaty referred to in subsection (j)(1)(C)(i)  
 10 (and any implementing arrangements to such trea-  
 11 ty), provided that the President promulgates regula-  
 12 tions to implement and enforce such treaty under  
 13 this section and section 39.”.

14 (d) INCENTIVE PAYMENTS.—Section 39A(a) of such  
 15 Act (22 U.S.C. 2779a(a)) is amended by inserting “or ex-  
 16 ported pursuant to a treaty referred to in section  
 17 38(j)(1)(C)(i) of this Act” after “under this Act”.

18 **SEC. 104. CONGRESSIONAL NOTIFICATION.**

19 (a) RETRANSFERS AND REEXPORTS.—Section  
 20 3(d)(3)(A) of such Act (22 U.S.C. 2753(d)(3)(A)) is  
 21 amended by inserting “or has been exempted from the li-  
 22 censing requirements of this Act pursuant to a treaty re-  
 23 ferred to in section 38(j)(1)(C)(i) of this Act where such  
 24 treaty does not authorize the transfer without prior United

1 States Government approval” after “approved under sec-  
2 tion 38 of this Act”.

3 (b) DISCRIMINATION.—Section 5(c) of such Act (22  
4 U.S.C. 2755(c)) is amended by inserting “or any import  
5 or export under a treaty referred to in section  
6 38(j)(1)(C)(i) of this Act” after “under this Act”.

7 (c) ANNUAL ESTIMATE OF SALES.—Section 25(a) of  
8 such Act (22 U.S.C. 2765(a)) is amended—

9 (1) in paragraph (1), by inserting “, as well as  
10 exports pursuant to a treaty referred to in section  
11 38(j)(1)(C)(i) of this Act,” after “commercial ex-  
12 ports under this Act”; and

13 (2) in paragraph (2), by inserting “, as well as  
14 exports pursuant to a treaty referred to in section  
15 38(j)(1)(C)(i) of this Act,” after “commercial ex-  
16 ports”.

17 (d) PRESIDENTIAL CERTIFICATIONS.—

18 (1) EXPORTS.—Section 36(c) of such Act (22  
19 U.S.C. 2776(c)) is amended by adding at the end  
20 the following new paragraph:

21 “(6) The President shall notify the Speaker of  
22 the House of Representatives and the Chairman of  
23 the Committee on Foreign Relations of the Senate  
24 at least 15 days prior to an export pursuant to a  
25 treaty referred to in section 38(j)(1)(C)(i) of this



1 Act to which the provisions of paragraph (1) of this  
2 subsection would apply absent an exemption granted  
3 under section 38(j)(1) of this Act, for which purpose  
4 such notification shall contain information com-  
5 parable to that specified in paragraph (1) of this  
6 subsection.”.

7 (2) COMMERCIAL TECHNICAL ASSISTANCE OR  
8 MANUFACTURING LICENSING AGREEMENTS.—Sec-  
9 tion 36(d) of such Act (22 U.S.C. 2776(d)) is  
10 amended by adding at the end the following new  
11 paragraph:

12 “(6) The President shall notify the Speaker of  
13 the House of Representatives and the Chairman of  
14 the Committee on Foreign Relations of the Senate  
15 at least 15 days prior to an export pursuant to a  
16 treaty referred to in section 38(j)(1)(C)(i) of this  
17 Act to which the provisions of paragraph (1) of this  
18 subsection would apply absent an exemption granted  
19 under section 38(j)(1) of this Act, for which purpose  
20 such notification shall contain information com-  
21 parable to that specified in paragraph (1) of this  
22 subsection.”.

23 (e) FEES AND POLITICAL CONTRIBUTIONS.—Section  
24 39(a) of such Act (22 U.S.C. 2779(a)) is amended—

1           (1) in paragraph (1), by striking “; or” and in-  
2       serting a semicolon;

3           (2) in paragraph (2), by inserting “or” after  
4       the semicolon; and

5           (3) by adding at the end the following new  
6       paragraph:

7           “(3) exports of defense articles or defense serv-  
8       ices pursuant to a treaty referenced in section  
9       38(j)(1)(C)(i) of this Act;”.

10 **SEC. 105. LIMITATION ON IMPLEMENTING ARRANGEMENTS.**

11       (a) IN GENERAL.—No amendment to an imple-  
12       menting arrangement concluded pursuant to a treaty re-  
13       ferred to in section 38(j)(1)(C)(i) of the Arms Export  
14       Control Act, as added by this Act, shall enter into effect  
15       for the United States unless the Congress adopts, and  
16       there is enacted, legislation approving the entry into effect  
17       of that amendment for the United States.

18       (b) COVERED AMENDMENTS.—

19           (1) IN GENERAL.—The requirements specified  
20       in subsection (a) shall apply to any amendment  
21       other than an amendment that addresses an admin-  
22       istrative or technical matter. The requirements in  
23       subsection (a) shall not apply to any amendment  
24       that solely addresses an administrative or technical  
25       matter.

1           (2) U.S.-UK IMPLEMENTING ARRANGEMENT.—

2           In the case of the Implementing Arrangement Pur-  
3           suant to the Treaty Between the Government of the  
4           United States of America and the Government of  
5           the United Kingdom of Great Britain and Northern  
6           Ireland Concerning Defense Trade Cooperation,  
7           signed at Washington February 14, 2008, amend-  
8           ments to which the requirements specified in sub-  
9           section (a) apply shall include—

10                   (A) any amendment to section 2, para-  
11                   graphs (1), (2), or (3) that modifies the criteria  
12                   governing operations, programs, and projects to  
13                   which the treaty applies;

14                   (B) any amendment to section 3, para-  
15                   graphs (1) or (2) that modifies the criteria gov-  
16                   erning end-use requirements and the require-  
17                   ments for approved community members re-  
18                   sponding to United States Government solicita-  
19                   tions;

20                   (C) any amendment to section 4, para-  
21                   graph (4) that modifies the criteria for includ-  
22                   ing items on the list of defense articles exempt  
23                   from the treaty;

24                   (D) any amendment to section 4, para-  
25                   graph (7) that modifies licensing and other ap-

1           plicable requirements relating to items added to  
2           the list of defense articles exempt from the  
3           scope of the treaty;

4           (E) any amendment to section 7, para-  
5           graph (4) that modifies the criteria for eligi-  
6           bility in the approved community under the  
7           treaty for nongovernmental United Kingdom  
8           entities and facilities;

9           (F) any amendment to section 7, para-  
10          graph (9) that modifies the conditions for sus-  
11          pending or removing a United Kingdom entity  
12          from the approved community under the treaty;

13          (G) any amendment to section 7, para-  
14          graphs (11) or (12) that modifies the conditions  
15          under which individuals may be granted access  
16          to defense articles exported under the treaty;

17          (H) any amendment to section 9, para-  
18          graphs (1), (3), (7), (8), (9), (12), or (13) that  
19          modifies the circumstances under which United  
20          States Government approval is required for the  
21          re-transfer or re-export of a defense article, or  
22          to exceptions to such requirement; and

23          (I) any amendment to section 11, para-  
24          graph (4)(b) that modifies conditions of entry

1 to the United Kingdom community under the  
2 treaty.

3 (3) U.S.-AUSTRALIA IMPLEMENTING ARRANGE-  
4 MENT.—In the case of the Implementing Arrange-  
5 ment Pursuant to the Treaty Between the Govern-  
6 ment of the United States of America and the Gov-  
7 ernment of the Australia Concerning Defense Trade  
8 Cooperation, signed at Washington March 14, 2008,  
9 amendments to which the requirements specified in  
10 subsection (a) apply shall include—

11 (A) any amendment to section 2, para-  
12 graphs (1), (2), or (3) that modifies the criteria  
13 governing operations, programs, and projects to  
14 which the treaty applies;

15 (B) any amendment to section 3, para-  
16 graphs (1) or (2) that modifies the criteria gov-  
17 erning end-use requirements and the require-  
18 ments for approved community members re-  
19 sponding to United States Government solicita-  
20 tions;

21 (C) any amendment to section 4, para-  
22 graph (4) that modifies criteria for including  
23 items on the list of defense articles exempt from  
24 the scope of the treaty;

1 (D) any amendment to section 4, para-  
2 graph (7) that modifies licensing and other ap-  
3 plicable requirements relating to items added to  
4 the list of defense articles exempt from the  
5 scope of the treaty;

6 (E) any amendment to section 6, para-  
7 graph (4) that modifies the criteria for eligi-  
8 bility in the approved community under the  
9 treaty for nongovernmental Australian entities  
10 and facilities;

11 (F) any amendment to section 6, para-  
12 graph (9) that modifies the conditions for sus-  
13 pending or removing an Australian entity from  
14 the Australia community under the treaty;

15 (G) any amendment to section 6, para-  
16 graphs (11), (12), (13), or (14) that modifies  
17 the conditions under which individuals may be  
18 granted access to defense articles exported  
19 under the treaty;

20 (H) any amendment to section 9, para-  
21 graphs (1), (2), (4), (7), or (8) that modifies  
22 the circumstances under which United States  
23 Government approval is required for the re-  
24 transfer or re-export of a defense article, or to  
25 exceptions to such requirement; and

1 (I) any amendment to section 11, para-  
2 graph (6) that modifies conditions of entry to  
3 the Australian community under the treaty.

4 (c) CONGRESSIONAL NOTIFICATION FOR OTHER  
5 AMENDMENTS TO IMPLEMENTING ARRANGEMENTS.—Not  
6 later than 15 days before any amendment to an imple-  
7 menting arrangement to which subsection (a) does not  
8 apply shall take effect, the President shall provide to the  
9 Committee on Foreign Relations of the Senate and the  
10 Committee on Foreign Affairs of the House of Representa-  
11 tives a report containing—

12 (1) the text of the amendment; and

13 (2) an analysis of the amendment’s effect, in-  
14 cluding an analysis regarding why subsection (a)  
15 does not apply.

16 **SEC. 106. IMPLEMENTING REGULATIONS.**

17 The President is authorized to issue regulations pur-  
18 suant to the Arms Export Control Act (22 U.S.C. 2751  
19 et seq.) to implement and enforce the Treaty Between the  
20 Government of the United States of America and the Gov-  
21 ernment of the United Kingdom of Great Britain and  
22 Northern Ireland Concerning Defense Trade Cooperation,  
23 done at Washington and London on June 21 and 26, 2007  
24 (and any implementing arrangement thereto) and the  
25 Treaty Between the Government of the United States of

1 America and the Government of Australia Concerning De-  
2 fense Trade Cooperation, done at Sydney, September 5,  
3 2007 (and any implementing arrangement thereto), con-  
4 sistent with other applicable provisions of the Arms Ex-  
5 port Control Act, as amended by this Act, and with the  
6 terms of any resolution of advice and consent adopted by  
7 the Senate with respect to either treaty.

8 **SEC. 107. RULE OF CONSTRUCTION.**

9       Nothing in this title, the Treaty Between the Govern-  
10 ment of the United States of America and the Government  
11 of the United Kingdom of Great Britain and Northern Ire-  
12 land Concerning Defense Trade Cooperation, done at  
13 Washington and London on June 21 and 26, 2007 (and  
14 any implementing arrangement thereto), the Treaty Be-  
15 tween the Government of the United States of America  
16 and the Government of Australia Concerning Defense  
17 Trade Cooperation, done at Sydney, September 5, 2007  
18 (and any implementing arrangement thereto), or in any  
19 regulation issued to implement either treaty, shall be con-  
20 strued to modify or supersede any provision of law or reg-  
21 ulation other than the Arms Export Control Act (22  
22 U.S.C. 2751 et seq.), as amended by this Act, and the  
23 International Traffic in Arms Regulations (subchapter M  
24 of chapter I of title 22, Code of Federal Regulations).



1           **TITLE II—AUTHORITY TO**  
2           **TRANSFER NAVAL VESSELS**

3   **SEC. 201. SHORT TITLE.**

4           This title may be cited as the “Naval Vessel Transfer  
5   Act of 2010”.

6   **SEC. 202. TRANSFER OF NAVAL VESSELS TO CERTAIN FOR-**  
7           **EIGN RECIPIENTS.**

8           (a) TRANSFERS BY GRANT.—The President is au-  
9   thorized to transfer vessels to foreign countries on a grant  
10   basis under section 516 of the Foreign Assistance Act of  
11   1961 (22 U.S.C. 2321j), as follows:

12           (1) INDIA.—To the Government of India, the  
13   OSPREY class minehunter coastal ships KING-  
14   FISHER (MHC-56) and CORMORANT (MHC-  
15   57).

16           (2) GREECE.—To the Government of Greece,  
17   the OSPREY class minehunter coastal ships OS-  
18   PREY (MHC-51), BLACKHAWK (MHC-58), and  
19   SHRIKE (MHC-62).

20           (3) CHILE.—To the Government of Chile, the  
21   NEWPORT class amphibious tank landing ship  
22   TUSCALOOSA (LST-1187).

23           (4) MOROCCO.—To the Government of Mo-  
24   rocco, the NEWPORT class amphibious tank land-  
25   ing ship BOULDER (LST-1190).

1       (b) TRANSFER BY SALE.—The President is author-  
2 ized to transfer the OSPREY class minehunter coastal  
3 ship ROBIN (MHC-54) to the Taipei Economic and Cul-  
4 tural Representative Office of the United States (which  
5 is the Taiwan instrumentality designated pursuant to sec-  
6 tion 10(a) of the Taiwan Relations Act (22 U.S.C.  
7 3309(a)) on a sale basis under section 21 of the Arms  
8 Export Control Act (22 U.S.C. 2761).

9       (c) GRANTS NOT COUNTED IN ANNUAL TOTAL OF  
10 TRANSFERRED EXCESS DEFENSE ARTICLES.—The value  
11 of a vessel transferred to another country on a grant basis  
12 pursuant to authority provided by subsection (a) shall not  
13 be counted against the aggregate value of excess defense  
14 articles transferred in any fiscal year under section 516  
15 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j).

16       (d) COSTS OF TRANSFERS.—Any expense incurred by  
17 the United States in connection with a transfer authorized  
18 by this section shall be charged to the recipient (notwith-  
19 standing section 516(e) of the Foreign Assistance Act of  
20 1961 (22 U.S.C. 2321j(e))).

21       (e) REPAIR AND REFURBISHMENT IN UNITED  
22 STATES SHIPYARDS.—To the maximum extent prac-  
23 ticable, the President shall require, as a condition of the  
24 transfer of a vessel under this section, that the recipient  
25 to which the vessel is transferred have such repair or re-

1 furbishment of the vessel as is needed, before the vessel  
 2 joins the naval forces of the recipient, performed at a ship-  
 3 yard located in the United States, including a United  
 4 States Navy shipyard.

5 (f) EXPIRATION OF AUTHORITY.—The authority to  
 6 transfer a vessel under this section shall expire at the end  
 7 of the 2-year period beginning on the date of the enact-  
 8 ment of this Act.

## 9 **TITLE III—OTHER MATTERS**

### 10 **SEC. 301. EXPEDITED CONGRESSIONAL DEFENSE EXPORT** 11 **REVIEW PERIOD FOR ISRAEL.**

12 The Arms Export Control Act (22 U.S.C. 2751 et  
 13 seq.) is amended—

14 (1) in sections 3(d)(2)(B), 3(d)(3)(A)(i),  
 15 3(d)(5), 21(e)(2)(A), 36(b), 36(c), 36(d)(2)(A),  
 16 62(c)(1), and 63(a)(2), by inserting “Israel,” before  
 17 “or New Zealand” each place it appears; and

18 (2) in section 3(b)(2), by inserting “the Govern-  
 19 ment of Israel,” before “or the Government of New  
 20 Zealand”.

### 21 **SEC. 302. EXTENSION OF WAR RESERVES STOCKPILE AU-** 22 **THORITY.**

23 (a) DEPARTMENT OF DEFENSE APPROPRIATIONS  
 24 ACT, 2005.—Section 12001(d) of the Department of De-  
 25 fense Appropriations Act, 2005 (Public Law 108–287;

1 118 Stat. 1011) is amended by striking “more than 4  
2 years after” and inserting “more than 8 years after”.

3 (b) FOREIGN ASSISTANCE ACT OF 1961.—Section  
4 514(b)(2)(A) of the Foreign Assistance Act of 1961 (22  
5 U.S.C. 2321h(b)(2)(A)) is amended by striking “fiscal  
6 years 2007 and 2008” and inserting “fiscal years 2011  
7 and 2012”.

○